JAAFAR ABU & ANOR.

v.

PUBLIC PROSECUTOR

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
WAN SULEIMAN SCJ
WAN HAMZAH SCJ
[CRIMINAL APPLICATION NO. 23 OF 1987]
14 MAY 1988

CRIMINAL LAW AND PROCEDURE: *Where there is no written judgment whether the High Court can act in revision - Whether the High Court Judge can treat an appeal as a revision case in the absence of a written judgment - Orders which the judge can make in such an instance.*

The 2 applicants with one other were charged and convicted under s. 4(a) of the Prevention of Corruption Act 1961 and were sentenced to 3 months imprisonment and one month imprisonment respectively. They appealed against sentence. There was no written judgment by the learned President of the Sessions Court as he had left the service. The High Court on appeal dismissed the appeal and affirmed the conviction and the sentence.

The applicants applied pursuant to s. 66(1) of the Courts of Judicature Act 1964 for a determination of the following questions:

[1] When there is an appeal pending and no grounds of judgment available can the High Court act in revision.

[2] If the answer is yes, what is the proper order the Judge should make.

Held:

[1] There was no doubt that the High Court in hearing an appeal can proceed to exercise its powers of revision and that the High Court Judge in the instant case had complete jurisdiction to do as he did.

[2] That if the learned Judge had complete jurisdiction then he is entitled to make such orders as he deems fit in the circumstances. Sentences of the applicants to be carried out forthwith.

[Appeal dismissed.]

Case referred to:
Chunbidya & Ors. v. Emperor [1935] AIR PC 35

Legislation referred to:
Courts of Judicature Act 1964, ss. 31, 66(1)
Criminal Procedure Code, ss. 323 - 327, 325(ii)
Prevention of Corruption Act 1961, ss. 4(a), 13

For the applicants - G. Sri Ram; M/s. Sri Ram, Zulkifly & Kumar
For the respondent - Mohd. Noor Bin Hj. Ahmad, DPP

JUDGMENT

Lee Hun Hoe CJ (Borneo):

Pursuant to s. 66(1) of the Courts of Judicature Act 1964, the following two questions were reserved for the decision of this Court:

1) When there is an appeal pending and no grounds of judgment are available can the High Court act in revision?

2) If the answer is yes, what is the proper order the learned Judge should make.

The facts may be set out briefly. On 13 December 1982, the applicants and one Munajat bin Taib were jointly charged with having committed an offence under s. 4(a) of the Prevention of Corruption Act, 1961. On 19 March 1984 they were found guilty as charged. The 1st applicant was sentenced to three months' imprisonment, the 2nd applicant to one month's imprisonment, and Munajat to one day's imprisonment and a fine of RM500 in default two months' imprisonment. They were also each ordered to pay RM5 to the Federal Revenue pursuant to s. 13 of the said Act. Being dissatisfied with the decision the two applicants appealed to the High Court. On 28 August 1987 the High Court, after hearing arguments, dismissed the appeal and confirmed the convictions and sentences.

The learned President found that the two applicants and Munajat (who did not appeal) had not raised any reasonable doubt on the truth of the case for the prosecution. Clearly, he was satisfied that the prosecution had proved the guilt of the applicants beyond reasonable doubt. However, he did not give his grounds of judgment as he had left the service. Normally, in an appeal, grounds of judgment are available. But, there is no reason why an appellate Court cannot hear an appeal without the benefit of the grounds of judgment, especially when an officer who had heard the case has left the service. Perhaps, the learned Judge found it more convenient or appropriate to treat the case as a revision case because of the absence of grounds of judgment. Counsel for the applicants contended the learned Judge was wrong to do so and urged us to order a retrial.

Quite rightly, the respondent pointed out that this was not an appeal but an application under s. 66(1) of the Courts of Judicature Act 1964. It is his contention that the two questions are not questions of public interest and that they do not reflect the true facts of the case. The powers of revision by a High Court are to be found in Part VII Chapter XXXI (ss. 323 to 327) of the Criminal Procedure Code and also under s. 31 of the Courts of Judicature Act 1964. Under s. 325(ii) of the Criminal Procedure Code it is provided that:

> No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.

The applicants cannot complain that they were not heard.

We have no doubt that the High Court in hearing an appeal can proceed to exercise its revision powers. This was laid down as early as 1935 by the Privy Council in *Chunbidya & Ors. v. Emperor* [1935] AIR PC 35. In that case it was made clear that although the record came to the knowledge of the High Court, it could choose to exercise its revision powers. Moreover, the exercise of revision of powers enabled the High Court to enhance sentence which it could not do in dealing with the appeal itself. In his judgment, Lord Atkin gave this lucid explanation: "or which otherwise comes to its knowledge."

Their Lordships are clearly of the opinion that when the High Court has before it on appeal a record of a criminal proceeding, the condition precedent is performed, and the High Court can then, though the record has only come to its knowledge in the appellate proceeding, proceed to exercise its revision powers if it chooses to do so. In this case the High Court did choose to exercise its revision powers ...".

In the instant appeal the learned Judge dealt with all the points raised by the parties. He inserted the words "By way of Revision" under the heading of the appeal number and in another part of his judgment. It indicated that he had decided to treat the case as revision case. There can be no doubt that he has complete jurisdiction to act as he did. The answer to the first question is therefore in the affirmative.

We do not think it is necessary to answer the second question. But, out of respect to Counsel for the applicants we need only say that if the learned Judge has complete jurisdiction then he is entitled to make such order as he deems fit in the circumstances. In the instant appeal he has decided to confirm the convictions and sentences. We see no reason to interfere with his decision.

It is ordered that the sentences imposed on the applicants be carried out forthwith.

Also found at [1988] 2 CLJ 595